

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JAMES M. MILNER
TX-1320687-R

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DOCKETED COMPLAINT NO.
14-051

AGREED FINAL ORDER

On the 21 day of NOV, 2014, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of James M. Milner (the "Respondent").

In order to conclude this matter, Respondent neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order (the "Agreed Final Order"). The Board makes the following findings of fact and conclusions of law and enters this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds certification TX-1320687-R and was certified by the Board during all times material to the above-noted complaint.
2. Respondent appraised residential real property located at: 350 Tyler Court, Weatherford, Texas 76086 (the "Property") on or about May 27, 2011.
3. On or about October 15th, 2013, complaint 14-051 was staff-initiated based upon an experience audit and which alleged Respondent violated various provisions of the Uniform Standards of Professional Appraisal Practice ("USPAP").
4. On or about January 31st, 2014, the Board, in accordance with the mandate of TEX.GOV'T CODE ANN. CHPT. 2001, the Administrative Procedure Act (the "APA"), and the Act, notified Respondent of the nature of the accusations involved. Respondent was afforded an opportunity to respond to the accusations in the complaint and was also requested to provide certain documentation to the Board. Thereafter, the Respondent provided the documentation.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1 by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Property:

- a) USPAP Ethics Rule – Respondent misrepresented that he inspected the Property when he did not do so;

- b) USPAP Record Keeping Rule -- Respondent failed to maintain a work file containing the documentation necessary to support of his analyses, opinions and conclusions;
- c) USPAP Competency Rule – Respondent was not competent to perform the appraisal of the Property;
- d) USPAP Scope of Work Rule 1-2(h) & Standard 2-2(vii) – Respondent failed to develop and perform the scope of work necessary to develop credible assignment results;
- e) USPAP Standards 1-2(c) & 2-2(b)(v) – Respondent failed to identify the type and definition of value and its source and did not indicate whether market value was estimated in terms of cash or cash equivalency or other non-market financing terms;
- f) USPAP Standards 1-2(f) and 1-2(g), 2-1(c) & 2-2(b)(x) – Respondent failed to report hypothetical conditions and extraordinary assumptions used in his appraisal of the Property and indicate that such resulted in credible assignment results. Use of such conditions and assumptions did not produce credible assignment results;
- g) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report adequately the site and improvements description;
- h) USPAP Standards 1-2(e)(iii), 1-4(g) & 2-2(b)(viii) – Respondent failed to identify and consider the effect on value of intangible items included in the appraisal;
- i) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to consider and report on individual leases and the rental pool agreement;
- j) USPAP Standards 1-3(a) & 2-2(b)(viii); 1-3(b) & 2-2(b)(ix) – Respondent failed to identify and analyze the effect on use and value of economic supply and demand and market area trends and failed to provide a summary of his rationale for his determination of the Property's highest and best use;
- k) USPAP Standards 1-4(b)(i) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to utilize an appropriate method or technique to develop an opinion of site value and did not employ recognized methods and techniques and provide support for his site value determination;
- l) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to collect, verify, analyze, and reconcile the cost of new improvements and did not employ recognized methods and techniques;
- m) USPAP Standards 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to collect, verify, analyze, and reconcile accrued depreciation and provide supporting rationale for his conclusions regarding this matter;

- n) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a) – Respondent failed to correct, verify, analyze and reconcile comparable sales data adequately and did not employ recognized methods and techniques correctly in the Sales Comparison Approach;
 - o) USPAP Standards 1-4(c)(i) & 2-2(b)(viii); 1-4(c)(ii) & 2-2(b)(viii); 1-4(c)(iv) & 2-2(b)(viii); 1-1(a) – Respondent failed to collect, verify, analyze and reconcile comparable rental data or potential earnings capacity, did not collect, verify, analyze and reconcile comparable operating expenses, did not base projections of future rent or income potential and expenses on reasonably clear and appropriate evidence and generally did not employ recognized methods and techniques in the income approach;
 - p) USPAP Standards 1-5(a) & 2-2(b)(viii) – Respondent failed to report and analyze all agreements of sale, options or listings of the Property current as of the effective date of his appraisal;
 - q) USPAP Standards 1-5(b) & 2-2(b)(viii) – Respondent failed to analyze prior sales of the Property within 3 years prior to the effective date of his appraisal;
 - r) USPAP Standards 1-6(a), (b) & 2-2(b)(viii) – Respondent failed to reconcile the quality and quantity of the data within the approaches used and the applicability or suitability of the approaches; and,
 - s) USPAP Standards 1-1(a), 1-1(b), 1-1(c), and, 2-1(a) – For the reasons detailed above, Respondent produced an appraisal report for the Property that contained several substantial errors of omission or commission which significantly impacted the appraisal and resulted in a misleading appraisal report.
6. Respondent made material misrepresentations and omissions of material fact in his appraisal of the Property as detailed above.
7. The parties enter into this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE CHPT. 1103.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1 and 153.20(a)(6).
3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(12) by making material misrepresentations and material omissions of material fact.

4. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code § 1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board ORDERS that Respondent's Texas appraiser certification (TX-1320687-R) be suspended, effective 5:00 p.m. (CST) on November 21st, 2014 and ending at 5:00 p.m. (CST) on November 20th, 2016. IT IS FURTHER ORDERED that beginning at 5:00 p.m. (CST) on November 21st, 2014, the suspension is to be fully probated, ending 5:00 p.m. (CST) on November 20th, 2016, subject to the following terms and conditions:

1. **EDUCATION.** On or before November 20th, 2015, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Agreed Final Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. If the class requires an exam, Respondent must receive a passing grade on the exam. None of the required class hours will count toward Respondent's continuing education requirements for certification. **Respondent is solely responsible for locating and scheduling classes to timely satisfy this Agreed Final Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.**
 - a. A minimum, 15 classroom hour course in USPAP;
 - i. No examination shall be required;
 - b. A minimum, 7 classroom hour course in the Sales Comparison Approach;
 - i. No examination shall be required;
 - c. A minimum, 7 classroom hour course in the Cost Approach;
 - i. No examination shall be required;
 - d. A minimum, 7 classroom hour course in the Income Approach for Residential Properties;
 - i. No examination shall be required;
2. **MENTORSHIP.** On or before February 20th, 2015, Respondent shall complete eight (8) hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the

approved certified USPAP instructor and a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board Mentors and Mentees on or before the due date listed for each mentorship requirement. **Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Agreed Final Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.**

- a. 2 hours of mentorship in sales comparison approach;
 - b. 2 hours of mentorship in the income approach;
 - c. 2 hours in the cost approach;
 - d. 1 hour in addressing external obsolescence; and,
 - e. 1 hour in report writing.
3. **ADMINISTRATIVE PENALTY.** On or before December 11th, 2014. Respondent shall pay to the Board an administrative penalty of two thousand dollars (\$2,000.00), by cashier's check or money order, within twenty (20) days of the effective date of this order (i.e. on or before December 11th, 2014).
4. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order; and
5. Respondent shall comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

ACKNOWLEDGMENT AND WAIVER

Respondent's failure to timely comply with any term in this agreed final order, which has a specific stated due date, shall result in the automatic revocation of probation and the suspension imposed in this agreed final order shall be effective for the full term, commencing on the effective date of the revocation of probation. If Respondent fails to timely comply with any term in this agreed final order, which has a specific, stated due date, the Respondent shall also be immediately assessed a \$1,000 administrative penalty.

Any such suspension shall be effective without the need for a hearing or other administrative due process under the Texas Appraiser Licensing and Certification Act or the administrative procedure act and Respondent specifically waives any such hearing or due process.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing, any motion for rehearing, and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's website.

I have read and reviewed this entire Agreed Final Order fully and am entering into it of my own free will to avoid the expense of litigation and to reach an expeditious resolution of the matter. I neither admit nor deny that the findings of fact and conclusions of law contained herein are correct. I understand all of my compliance obligations under this Agreed Final Order and the consequences for failing to comply with those obligations.

I understand that the board and its staff cannot provide me with legal advice and I am aware of my right to be represented by an attorney of my own choosing. I am aware of my right to a hearing, and hereby waive a hearing and also waive any right to seek judicial review of this Agreed Final Order, including for any subsequent action resulting from my failure to timely comply with an administrative requirement of this Agreed Final Order (e.g. payment of a penalty, completion of remedial education, or failure to provide logs).

DELIVERY OF DOCUMENTS AND PAYMENTS FOR COMPLIANCE

Respondent is solely responsible for timely delivery to the Board of all documents and payments necessary for compliance of this Agreed Final Order. Payment of any administrative penalties due must be in the form of a cashier's check or money order made payable to the "Texas Appraiser Licensing and Certification Board" and delivered via certified mail, return receipt requested. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming timely receipt by the Board of all the documents necessary for compliance with this Agreed Final Order.

Respondent shall send all documents and payments necessary for compliance by: (1) email to: compliance.talcb@talcb.texas.gov; (2) fax to: (512) 936-3966, attn: Compliance; or (3) certified mail, return receipt requested, to: Standards & Enforcement Services, Texas Appraiser Licensing & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.

EXECUTION

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

RESPONDENT

Signed this 2 day of September, 2014.


JAMES M. MILNER

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 2nd day of September, 2014, by JAMES M. MILNER, to certify which, witness my hand and official seal.

Linda Louise Gilbert
Notary Public Signature

Linda Louise Gilbert
Notary Public's Printed Name



BOARD STAFF ATTORNEY

Signed by the Standards and Enforcement Services Division this 3RD day of SEPTEMBER, 2014.

Troy Beaulieu

Troy Beaulieu, Staff Attorney
Texas Appraiser Licensing and Certification Board

BOARD COMMISSIONER

Signed by the Commissioner this 21 day of NOV, 2014.

Douglas Oldmixon

Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

BOARD CHAIRPERSON

Approved by the Board and Signed this 21 day of November, 2014.

Jamie S. Wickliffe

Jamie S. Wickliffe, Chairperson
Texas Appraiser Licensing and Certification Board